

*Allred*

By *Stewart*

422

*4* B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; relating to the fitting and dispensing of hearing aids in this state; providing penalties; amending Subsections (c), (d), and (f) of Section 1, Subsections (e) and (f) of Section 4, Subsection (a) of Section 8, Section 10, Subsections (d) and (f) of Section 11, Subsection (a) of Section 13, Subsections (b) and (d) of Section 14, Section 16, and Section 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, and by adding Subsections (e) and (f) to Section 14, and Subsection (c) to Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes); and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Subsections (c), (d), and (f), Section 1, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01, Vernon's Texas Civil Statutes), are amended to read as follows:

"(c) 'Temporary Training Permit' means a permit issued by the Board to persons authorized to fit and dispense hearing aids only under the supervision, as defined by the Board, of a person who holds a license under this Act.

"(d) 'Hearing aid' means any instrument or device designed for, or represented as, aiding, improving or correcting defective human hearing, and as used herein shall mean repair services, replacements for defective parts but shall not include batteries, cords and accessories in a licensed dealer's office."

"(f) 'Fitting and Dispensing hearing aids' means the measurement of human hearing by the use of an audiometer or by any electrical means as defined by the Board in their rules and regulations, for the purpose of making selections, adaptations and/or sales of hearing aids. The term also includes the sale of hearing aids, and the making of impressions for earmolds to be used as a part of the hearing aid."

Sec. 2. Subsections (e) and (f), Section 4, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.04, Vernon's Texas Civil Statutes), are amended to read as follows:

"(e) The Board or each Board member shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for injunction shall be in addition to any other action, proceeding or remedy authorized by law.

"(f) The Board and each member is charged with the duty of aiding in the enforcement of this Act, and any member of the

1 Board may present to the Attorney General or a County or District  
2 Attorney of this state complaints relating to violations of any  
3 provision of this Act; and the Board through the members, offi-  
4 cers, counsel, and agents may assist in the trial of any case  
5 involving alleged violations of this Act, subject to the control  
6 of the Attorney General, County Attorney, or District Attorney  
7 charged with the responsibility of prosecuting such case."

8 Sec. 3. Subsection (a), Section 8, Chapter 366, Acts of the  
9 61st Legislature, Regular Session, 1969 (Article 4566-1.08,  
10 Vernon's Texas Civil Statutes), is amended to read as follows:

11 "(a) Upon proper application, the Texas Board of Examiners  
12 in Fitting and Dispensing of Hearing Aids at its discretion may  
13 grant a license to fit and dispense hearing aids without requir-  
14 ing an examination to licentiates of other states or territories  
15 having requirements equivalent to or higher than those in effect  
16 pursuant to this Act for fitting and dispensing hearing aids."

17 Sec. 4. Section 10, Chapter 366, Acts of the 61st Legis-  
18 lature, Regular Session, 1969 (Article 4566-1.10, Vernon's Texas  
19 Civil Statutes), is amended to read as follows:

20 "Section 10. Refusal to license and revocation or suspen-  
21 sion of license--grounds.

22 "The Board may, in its discretion, refuse to issue a license  
23 to any applicant and may cancel, revoke or suspend the operation  
24 of any license by it granted, for any of the following reasons:

25 "(1) The applicant or licensee is guilty of gross immoral-  
26 ity.

27 "(2) The applicant or licensee is unfit or incompetent by  
28 reason of negligence or fails to service the hearing aids sold  
29 in his trade area.

30 "(3) The applicant or licensee is guilty of any fraud,  
31 deceit or misrepresentation in the fitting and dispensing hearing  
32 aids or in his seeking of a license under this Act.

33 "(4) The applicant or licensee has been convicted of a  
34 felony or a misdemeanor which involved moral turpitude.

35 "(5) The applicant or licensee is a habitual drunkard or is  
36 addicted to the use of morphine, cocaine, or other drugs having  
37 similar effects or has become insane or has been adjudged by a  
38 court of competent jurisdiction to be of unsound mind.

39 "(6) The applicant or licensee has violated any of the pro-  
40 visions of this Act.

41 "(7) The licensee has knowingly, directly or indirectly  
42 employed, hired, procured, or induced a person not licensed to fit  
43 and dispense hearing aids in this state, to so fit and dispense  
44 hearing aids.

45 "(8) The licensee aids or abets any person not duly  
46 licensed under this Act in the fitting or dispensing of hearing  
47 aids.

48 "(9) The licensee lends, leases, rents, or in any other  
49 manner places his license at the disposal or in the service of any  
50 person not licensed to fit and dispense hearing aids in this  
51 state.

52 "(10) The licensee knowingly used or caused or promoted  
53 the use of any advertising matter, promotional literature, guar-  
54 antees, warranty, disseminated or published with misleading,

1 deceiving or false information. It is the intention of the Legis-  
2 lature that the provisions of this Subsection (10) and the fol-  
3 lowing Subsection (11) be interpreted insofar as possible to  
4 coincide with the orders and rules of the Federal Trade Commission  
5 on such subjects.

6 "(11) The licensee advertised a particular model, type or  
7 kind of hearing aid for sale when purchasers or prospective pur-  
8 chasers responding to the advertisement cannot purchase or are  
9 dissuaded from purchasing the advertised model, type, or kind when  
10 it is established that the purpose of the advertisement is to  
11 obtain prospects for the sale of a different model, type or kind  
12 than was advertised.

13 "(12) The licensee represented that the service or advice  
14 of a person licensed to practice medicine by the Texas State  
15 Board of Medical Examiners is used or made available in the  
16 selection, fitting, adjustment, maintenance, or repair of a hear-  
17 ing aid when such representation was not true.

18 "(13) The licensee used the term 'doctor,' 'clinic' or any  
19 like words, abbreviations or symbols in the conduct of his busi-  
20 ness which would tend to connote that the licensee was a physi-  
21 cian or surgeon.

22 "(14) The licensee defamed another licensee under this Act  
23 by falsely imputing to him dishonorable conduct, inability to  
24 perform contracts, questionable credit standing, or any other  
25 false representation or falsely disparaging the products of such  
26 other licensee in any respect, or the business methods, selling  
27 prices, values, credit terms, policies, or services of such other  
28 licensee.

29 "(15) The licensee displayed competitive products in his  
30 place of business, or in the advertising in such manner as to  
31 falsely disparage them.

32 "(16) The licensee quoted prices of competitive hearing  
33 aids or devices without disclosing that the prices were not the  
34 present, correct, current prices, or falsely showed, demonstrated  
35 or represented competitive hearing aids models as being the cor-  
36 rect, current model of such hearing aids.

37 "(17) The licensee imitated or simulated the trademark,  
38 trade name, brand, or label of another licensee under this Act  
39 with the intent to mislead or deceive purchasers or prospective  
40 purchasers.

41 "(18) The licensee used in his advertising the name, model  
42 name or trademark of a particular manufacturer of hearing aids  
43 with the intent to falsely imply a relationship with such manu-  
44 facturer that does not exist.

45 "(19) The licensee obtained or attempted to obtain infor-  
46 mation concerning the business of another licensee under this Act  
47 by bribery, or attempting to bribe an employee or agent of such  
48 other licensee or by the impersonation of one in authority.

49 "(20) The licensee directly or indirectly gave, or offered  
50 to give or permitted or caused to be given money or anything of  
51 value to any person especially one who advises others in a pro-  
52 fessional capacity as an inducement to influence such person to  
53 influence those persons such person advises in a professional  
54 capacity to purchase or contract to purchase products sold or

1 offered for sale by licensee or to refrain from purchasing or  
2 contracting to purchase products sold or offered for sale by any  
3 other licensee under this Act.

4 "(21) The licensee falsely represented to a purchaser that  
5 a hearing aid was 'custom-made,' 'made to order,' 'prescription-  
6 made' or any other representations that such hearing aid was  
7 specially fabricated for the purchaser.

8 "(22) The licensee refused to accept responsibility for the  
9 acts of a licensee or a temporary training permittee in a licens-  
10 ee's employ and under licensee's supervision.

11 "(23) The licensee with fraudulent intent, engaged in the  
12 fitting and dispensing of hearing aids under a false name or  
13 alias.

14 "(24) The licensee had failed to actively engage in the  
15 fitting and dispensing of hearing aids for a period of three  
16 consecutive years.

17 "(25) The licensee violated a rule of the Federal Trade  
18 Commission."

19 Sec. 5. Subsections (d) and (f), Section 11, Chapter 366,  
20 Acts of the 61st Legislature, Regular Session, 1969 (Arti-  
21 cle 4566-1.11, Vernon's Texas Civil Statutes), are amended to read  
22 as follows:

23 "(d) The Board shall not be bound by strict rules of pro-  
24 cedure or by the laws of evidence in the conduct of its proceed-  
25 ings."

26 "(f) Any person whose license to fit and dispense hearing  
27 aids has been refused or has been cancelled, revoked or suspended  
28 by the Board, may, within 20 days after making and entering of  
29 such order, take an appeal to any district court of Travis  
30 County."

31 Sec. 6. Subsection (a), Section 13, Chapter 366, Acts of  
32 the 61st Legislature, Regular Session, 1969 (Article 4566-1.13,  
33 Vernon's Texas Civil Statutes), is amended to read as follows:

34 "(a) On or before the first day of January of each year,  
35 every licensee under this Act shall pay to the Secretary-Treasurer  
36 of the Board an annual renewal fee of \$50.00 for the renewal of  
37 his license to fit and dispense hearing aids for the current  
38 year. On receipt of said renewal fee, the Board in its discretion  
39 may issue an annual renewal certificate bearing the number of his  
40 license, the year for which it is renewed and such other infor-  
41 mation from the records of the Board as the Board may deem neces-  
42 sary for the proper enforcement of this Act."

43 Sec. 7. Subsections (b) and (d), Section 14, Chapter 366,  
44 Acts of the 61st Legislature, Regular Session, 1969 (Arti-  
45 cle 4566-1.14, Vernon's Texas Civil Statutes), are amended to read  
46 as follows:

47 "(b) Every licensee shall deliver to each person supplied  
48 with a hearing aid, by the licensee or under his direction, a bill  
49 of sale which shall contain his signature, his printed name, the  
50 address of his principal office, the number of his license, a  
51 description of the make and model of the hearing aid furnished and  
52 the amount charged therefor, whether the hearing aid is new, used  
53 or rebuilt, and serial number and length of guarantee on all new  
54 and used hearing aids sold."

1       "(d) Every licensee must, when dealing with a child  
2 10 years of age or under, ascertain whether the child has been  
3 examined by an otolaryngologist for his recommendation within  
4 90 days prior to the fitting. If such is not the case, a recom-  
5 mendation within 90 days prior to the fitting. If such is not  
6 the case, a recommendation by the licensee to do so must be made  
7 and the licensee may not complete the sale."

8       Sec. 8. Section 14, Chapter 366, Acts of the 61st Legisla-  
9 ture, Regular Session, 1969 (Article 4566-1.14, Vernon's Texas  
10 Civil Statutes), is amended by adding new Subsections (e) and (f)  
11 to read as follows:

12       "(e) Every licensee must have his testing equipment  
13 calibrated annually. Proof of calibration shall be submitted to  
14 the board on forms prescribed by the board.

15       "(f) Every licensee, when testing or demonstrating to a  
16 person who is a resident of a rest home, mental institution, or  
17 hospital, must have a competent person present who is not a  
18 licensee under this Act or connected with a hearing aid firm or  
19 manufacturer. The third party must sign a statement certifying  
20 his presence during the testing or demonstration."

21       Sec. 9. Section 15, Chapter 366, Acts of the 61st Legisla-  
22 ture, Regular Session, 1969 (Article 4566-1.15, Vernon's Texas  
23 Civil Statutes), is amended by adding a new Subsection (c) to  
24 read as follows:

25       "(c) It is unlawful for any hearing aid dealer to adver-  
26 tise, by direct mail, television, radio, or newspaper, the price  
27 of any hearing aid, a discount on prices, free hearing test, full  
28 trial periods, or any other full service as a means to induce or  
29 invite prospective hearing aid users into a licensee's office,  
30 or to conduct a telephone survey for the purpose of obtaining  
31 names as leads for the purpose of selling hearing aids. Licens-  
32 ees may not sell hearing aids by mail."

33       Sec. 10. Section 16, Chapter 366, Acts of the 61st Legisla-  
34 ture, Regular Session, 1969 (Article 4566-1.16, Vernon's Texas  
35 Civil Statutes), is amended to read as follows:

36       "Section 16. Penalty.

37       "Whoever violates any provision of this Act shall be fined  
38 not less than \$250.00 nor more than \$1,000.00 or be confined in  
39 jail for a period of not more than one year or both."

40       Sec. 11. Section 19, Chapter 366, Acts of the 61st Legisla-  
41 ture, Regular Session, 1969 (Article 4566-1.19, Vernon's Texas  
42 Civil Statutes), is amended to read as follows:

43       "Section 19. Exceptions.

44       "Nothing in this Act shall be construed to apply to the fol-  
45 lowing:

46       "(1) Persons engaged in the practice of measuring human  
47 hearing as a part of the academic curriculum of an accredited  
48 institution of higher learning.

49       "(2) Persons engaged in the practice of measuring human  
50 hearing as a part of a program conducted by a nonprofit organiza-  
51 tion, provided such organization or its employees does not sell  
52 hearing aids or ear molds.

53       "(3) Physicians and surgeons duly licensed by the Texas  
54 State Board of Medical Examiners and qualified to practice in the  
55 State of Texas.

1       "(4) Persons employed and directly supervised by a  
2 physician and surgeon to test or measure human hearing, provided  
3 such persons do not sell hearing aids or ear molds."

4       Sec. 12. The importance of this legislation and the crowded  
5 condition of the calendars in both houses create an emergency and  
6 an imperative public necessity that the Constitutional Rule  
7 requiring bills to be read on three several days in each house be  
8 suspended, and this Rule is hereby suspended, and that this Act  
9 take effect and be in force from and after its passage, and it is  
10 so enacted.  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54

## A BILL TO BE ENTITLED

## AN ACT

relating to the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids; relating to the fitting and dispensing of hearing aids in this state; providing penalties; amending Subsections (c), (d), and (f) of Section 1, Subsections (e) and (f) of Section 4, Subsection (a) of Section 8, Section 10, Subsections (d) and (f) of Section 11, Subsection (a) of Section 13, Subsections (b) and (d) of Section 14, Section 16, and Section 19, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969, and by adding Subsections (e) and (f) to Section 14, and Subsection (c) to Section 15, Chapter 366, Acts of the 61st Legislature, Regular Session, 1969 (Article 4566-1.01 et seq., Vernon's Texas Civil Statutes); and declaring an emergency.

FILED FEB 4 1971

READ 1ST TIME  
AND REFERRED TO COMMITTEE ON  
*State Affairs*  
*Dorothy J. [Signature]*

Chief Clerk, House of Representatives